PATENT APPLICATION

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July 14, 2008
Date

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit:	1761
Examiner:	Carolyn A. Paden
Applicant:	Pak Nin Chan
Serial No:	10/750,241
Filing Date:	December 30, 2003
For:	METHOD AND APPARATUS FOR MAKING A CANDY PRODUCT AND THE CANDY PRODUCT ITSELF ("K")
Date:	July 15, 2008

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

A Notice of Appeal was filed in this case on February 15, 2008.

This Appeal Brief is submitted in triplicate and is otherwise in accordance with 37 C.F.R. § 1.192 and M.P.E.P. 1206. This Appeal Brief is accompanied by the fees set forth in 37 C.F.R. § 1.17(b) and a Petition for Extension of Time and the appropriate fee.

ORAL HEARING

Applicant does not request an oral hearing.

REAL PARTY IN INTEREST

Candy Novelty Works, Ltd., having a place of business at 342 344 Kwun Tong Road, Chuan Yuan Bld. 8/A, Kwun Tong, Kowloon, Hong Kong, is the real party in interest. The inventor Pak Nin Chan has assigned his interest in and to the invention and application to Candy Novelty Works, Ltd.

RELATED APPEALS AND INTERFERENCES

There are no related patents, appeals and/or interferences.

STATUS OF THE CLAIMS

No claims have been allowed. Claims 1 – 14, 25 and 26 have been finally rejected. Claims 1 – 3 stand finally rejected under 35 U.S.C. § 102(e) as being anticipated by Collins et al. US-2003/0026873.Claims 15-24 are withdrawn from further consideration in this application. Claims 1 – 14, 25 and 26 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Collins et al. US-2003/0026873. Claims 1-26 are the attached Apendix

STATUS OF AMENDMENTS

All of the amendments that have been previously submitted to the Examiner have been entered. While writing this Appeal Brief, applicant discovered some minor informalities in the claims and submits the following proposed amendments to correct those informalities:

Claim 1, line 22, delete "metal."

Claim 2, line 3, change "surface" to --side--.

Claim 4, line 10, change "low" to --lower--.

Claim 7, line 6, delete "moving", first occurrence.

Claim 9, line 2, change "pattern" to --patterns--.

Claim 25, line 2, change "the" to --a--.

Claim 25, line 2, before "second", insert --a--.

Claim 26, line 1, second occurrence, change "the" to --a--.

SUMMARY OF THE INVENTION

The claimed method invention starts with, "providing a substantially planar sheet candy member having an upper side and a lower side, (page 4, lines 17-19) " followed by "positioning the lower side of the sheet candy member on a substantially planar support surface" (page 6, line 5-7). The sheet candy member is designated 12 in Figs. 1 – 5. The support surface is the upper surface of member 28. In Figs. 4 and 5, the sheet candy member 12 is shown positioned on a plastic sheet 34. This is optional.

The next step is "providing a vacuum carrier having a substantially planar lower carrier surface, a predetermined pattern of openings in the lower carrier surface, and a vacuum chamber above the predetermined pattern of openings." (page 6, lines 18-20) In Figs. 9, 10 and 11, the vacuum carrier is designated 54. A portion of the vacuum carrier 54 is shown by Fig. 7a. Carrier 54 includes a bottom member that includes a pattern of openings. The openings are in communication with a vacuum chamber 67 (page 6, lines 25 and 26).

As shown best by Figs. 7 and 9, a substantially flat support surface 52 is provided and colored candy beads are positioned on the support surface next to each other (page 6, lines 11-18). Then, the vacuum carrier 54 is positioned over the candy beads 14 and is moved downwardly to place its lower carrier surface adjacent the candy beads (page 6, lines 28-30). In Figs. 7 and 8, candy beads 14 are positioned on the support surface 52 and the lower carrier surface of the vacuum carrier is directed towards the candy beads 14 (page 6, lines 30-35).

Next, the vacuum chamber 67 is connected to a vacuum and this vacuum and the holes in the lower carrier surface are used to pick up a predetermined pattern of the candy beads 14 from the support surface 52 and hold them on the lower surface of the carrier, while leaving the remaining candy beads 14 on the support surface 52 (page 6, lines 18-37). In Fig. 9, a pattern of beads 14 is designated 68. These beads 68 are shown attached to the bottom of the carrier member 54 (page 7, lines 4-15).

Next, the vacuum carrier 54 is positioned over the sheet candy member 12 and is lowered to move the candy bead pattern 68 relatively towards and against the sheet candy member 12. The carrier is moved so as to place the candy beads 14 on the upper surface of the sheet candy member. Then, the vacuum is released from the vacuum chamber and the carrier is moved away from the sheet candy member 12, leaving the pattern 68 of candy beads 14 attached to the sheet candy member 12 (page 7, lines 4-15).

Preferably, the colored candy beads 14 of pattern 68 are all the same color (page 7, lines 29 and 30).

Next, additional colored candy beads 16 (Fig. 1) are positioned next to each other on a substantially flat support surface. A vacuum carrier 54 is provided that has a substantially planar lower carrier surface, including a second pattern of openings in the lower carrier surface, and a second vacuum chamber 67' above the second pattern of openings (page 7, lines 29-35). This vacuum carrier 54 is set down onto the candy beads 16 and the vacuum chamber is connected to a vacuum. This vacuum and the second pattern of openings in the lower carrier surface is used to pick up a second predetermined pattern of candy beads 16 and hold them on the lower carrier surface (page 8, lines 13-32). The vacuum carrier and beads 16 are moved away from the support surface, leaving the remaining candy beads 16 on the support surface. Then,

the carrier is positioned over the sheet candy member and is moved downwardly to place the additional candy beads 16 on the upper surface of the sheet candy member 12. The vacuum is then released from the vacuum chamber and the carrier is moved away from the sheet candy member 12. In the process, the second predetermined pattern of additional candy beads 16 is attached to the sheet candy member.

The above-described steps are then repeated with a third color of candy beads and with a third different pattern of openings in the bottom of the vacuum carrier (page 8, lines 24 to page 9 line 6). When the third pattern of candy beads is placed on the sheet candy member, the three patterns of colored candy beads 14, 16, 18 form a picture on the sheet candy member 12.

When the candy beads are placed on the slat support surface, the slat support surface may be vibrated to cause the colored candy beads to move into close contact with each other, without any of the candy beads being situated on top of other candy beads. A press may be positioned over the candy beads and used to push the candy beads into the sheet candy member (page 6, lines 9-37, and page 7, lines 16-23).

A single vacuum carrier may be provided which has a plurality of predetermined patterns of openings in its lower surface (page 7, line 36 to page 8, lines 1-20). Each pattern of openings is provided with a separate vacuum chamber in the vacuum carrier above the openings. The interior of the vacuum carrier may be divided into discreet parts by interior walls. For example, Fig. 7A shows a first vacuum chamber 67 on a first side of a divider wall and a second vacuum chamber 67' on the opposite side of the divider wall. A first vacuum connection 66 is connected to the first vacuum chamber 67 and a second vacuum connection 66' is connected to the second vacuum chamber 67'. Candy beads are only picked up by the pattern of openings that are connected to vacuum (page 8, lines 2-32).

MATTERS TO BE REVIEWED ON APPEAL

This appeal brings two issues before the Board, namely:

(1) Are claims 1 – 3 anticipated by Collins et al. US-2003/0026873, under 35 U.S.C. § 102(e)?

(2) Are claims 1 – 14, 25 and 26 unpatentable under 35 U.S.C. § 103(a) as being obvious from Collins et al US-2003/0026873?

ARGUMENT

Applicant submits that claims 1 – 3 are not anticipated by Collins et al. US-2003/0026873. It is well established, anticipation under 35 U.S.C. § 102(e) requires that each and every element set forth in the claim be found, either expressly or inherently described, in a single prior art reference. In Robertson, 169 F3d 743, 49 USPQ 2d 1949 (Fed. Cir. 1999). Here, claim 1, specifies "placing colored candy beads next to each other on a substantially flat support surface." This is shown by Fig. 7, for example, where candy beads 14 are positioned next to each other on a substantially flat surface 52. Claim 1 further specifies "providing a vacuum carrier having a substantially planar lower carrier surface, a predetermined pattern of openings in the lower carrier surface, and a vacuum chamber over the predetermined pattern of openings." This is followed by "placing the vacuum carrier over the candy beads with the lower carrier surface directed towards the candy beads", "moving the vacuum carrier downwardly to place the carrier surface adjacent the candy beads", and "connecting the vacuum chamber to a vacuum and using the vacuum and the predetermined pattern of holes in the lower carrier surface to pick up a predetermined pattern of the candy beads from the support surface and hold them on the lower carrier surface of the carrier, while leaving the remaining candy beads on the support surface."

In contrast, Collins et al. US-2003/0026873 provides carrier bars 3 having

pockets 5 for receiving pellet-shaped candies that are introduced in a hopper 2. The pockets 5 form a predetermined *defined* pattern. The carrier bars 3 move beneath the hopper 2 on an incline. This causes pellet-shaped candy pieces to fill the pockets 5. At the top of the incline, the bars 3 move horizontally under a transverse station 7. The transverse station 7 has suction elements 11 (Fig. 3) which are positioned on the transfer block 12 in a pattern corresponding to the pattern of candies held in the pockets 5 of the carrier bars 3. In paragraph [0029], it is stated:

> As such, ramp conveyor 1 is synchronized to move a grouping 4 of pellet-shaped candy pieces under transfer station 7, each pellet-shaped candy piece being aligned with suction element 11. Once aligned, suction elements 11 are lowered onto the pellet-shaped candy pieces and suction is applied. The suction elements 11 may be individually slideable or the transfer block 12 may be movable in a vertical direction elements 11 to contact the candy pieces. Thus, when the suction elements are raised, pellet-shaped candy pieces are removed from their respective pocket 5. Transfer block 12 is then slideably moved over edible sub straight conveyor 9.

Granted, applicant and Collins et al. US-2003/0026873 both pick up a pattern of candy pieces and move them over and place them on flat candy members. However, they do not do it in the same way. Collins et al. US-2003/0026873 creates the pattern by the use of pockets 5 in the carrier bars 3. These pockets are spaced apart and it is that spacing that determines the pattern of the candy members 34 (Fig. 6). Applicant places colored candy beads next to each other on a substantially flat support surface. Then, a pattern of openings in the lower carrier surface of a vacuum carrier, and a vacuum chamber above a pattern of openings in the, are used to pick up a pattern of the candy beads and move them away from the support surface, "while leaving the remaining candy beads on the support surface." See Fig. 9 which shows a pattern 68 of the candy beads on the bottom of the carrier 54 and a corresponding open space 68 in the remaining candy beads that are left close to each other on the support surface

52. The vacuum carrier picks up a pattern or group of the candy beads 14 and keeps them close together while transferring them to the candy sheets 12.

Claim 2 depends from claim 1 and adds the step of "applying an edible adhesive to the upper side of the sheet candy member and placing the pattern of candy beads on the upper surface of the sheet candy member." Granted, Collins et al. US-2003/0026873 refers to the use of an edible glue for affixing the candy pieces to the chocolate member 8. However, claim 2 is patentable because it includes the unique way of picking up a pattern of candy beads and moving them to the candy member, while leaving the remainder of the beads on the flat surface.

Claim 3 depends from claim 1 and further specifies that the patterns of colored candy beads are all the same color.

CLAIMS 1-14, 25 AND 26 ARE NOT OBVIOUS FROM COLLINS ET AL US-2003/0026873

Claim 4 depends from claim 3 and specifies "providing a vacuum carrier having a substantially planar lower surface, a second predetermined pattern of openings in the lower carrier surface, and a vacuum chamber above the second predetermined pattern of openings." Claim 4 also specifies "using the vacuum and the second predetermined pattern of openings in the lower carrier surface to pick up a second predetermined pattern of "additional colored candy beads of a different color" that are "next to each other on a substantially flat support surface" and "using the vacuum and a second predetermined pattern of openings" to pick up and "hold such second predetermined pattern of candy beads on the lower carrier surface of the carrier while leaving the remaining candy beads on the support surface." As previously stated, Collins et al. United States-2003/0026873 uses spaced apart pockets 5 in the members 3 for creating a pattern of candy beads. The vacuum is used to pick up the candy beads out

from the pockets 5 and move them over onto the candy members 8.

Claim 5 depends from claim 4 and adds the step of "providing an edible adhesive on the upper surface of the candy sheet member and placing the first and second predetermined patterns of the additional candy beads on the edible adhesive."

Claim 6 depends from claim 4 and specifies "the second predetermined additional color candy beads are all the same color."

Claims 7 – 9 specify "placing candy beads of a third color next to each other on a substantially flat support surface" and using a vacuum and a "third predetermined pattern of openings in the lower carrier surface to pick up a third predetermined pattern of said third color of candy beads and hold such predetermined pattern of beads on the lower carrier surface of the carrier" and then using the carrier to move the third predetermined pattern of candy beads onto the upper surface of the sheet candy member.

CONCLUSION

For the reasons discussed above, it is submitted that claim 1-14, 25 and 26 are patentable over the reference patents. The Board is asked to reverse the Examiner and allow this application.

Respectfully submitted,

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APPENDIX

Claim 1 The method comprising:

providing a substantially planar sheet candy member having an upper side and a lower side;

positioning the lower side of the sheet candy member on a substantially planar support surface;

providing a vacuum carrier having a substantially planar lower carrier surface, a predetermined pattern of openings in the lower carrier surface, and a vacuum chamber above the predetermined pattern of openings;

placing colored candy beads next to each other on a substantially flat support surface;

placing the vacuum carrier over the candy beads with the lower carrier surface directed towards the candy beads;

moving the vacuum carrier downwardly to place the carrier surface adjacent the candy beads;

connecting the vacuum carrier chamber to a vacuum and using the vacuum and the predetermined pattern of holes in the lower carrier surface to pick up a predetermined pattern of the candy beads from the support surface and hold them on the lower carrier surface of the carrier, while leaving the remaining candy beads on the support surface;

positioning the carrier over the sheet candy member and moving the carrier and the predetermined pattern of candy beads relatively towards the sheet candy member

to place the pattern of the candy beads on the upper surface of the sheet metal candy member;

releasing the vacuum from the carrier vacuum chamber and removing the carrier away from the sheet candy member; and

leaving the predetermined pattern of candy beads attached to the sheet candy member.

Claim 2 The method of claim 1, comprising applying an edible adhesive to the upper side of the sheet candy member and placing the pattern of candy beads on the upper surface of the sheet candy member.

Claim 3 The method of claim 1, wherein the pattern of colored candy beads are all the same color.

Claim 4 The method of claim 3, comprising placing additional colored candy beads of a different color next to each other on a substantially flat support surface;

providing a vacuum carrier having a substantial planar lower carrier surface, a second predetermined pattern of openings in the lower carrier surface, and a vacuum chamber above the second predetermined pattern of openings;

placing a the vacuum carrier over the additional candy beads and moving the vacuum carrier adjacent the additional beads;

connecting the vacuum chamber to a vacuum;

using the vacuum and the second predetermined pattern of openings in the low carrier surface to pick up a second predetermined pattern of said additional candy beads and hold such second predetermined pattern of candy beads on the lower carrier surface of the carrier while leaving the remaining candy beads on the support surface;

positioning the carrier over the candy sheet member and moving the carrier and the second predetermined pattern of the additional candy beads downwardly to place

the second predetermined pattern of additional candy beads on the upper surface of the sheet candy member;

releasing the vacuum from the carrier vacuum chamber and removing the carrier away from the sheet candy member; and

leaving the second predetermined pattern of additional candy beads attached to the sheet candy member.

Claim 5 The method of claim 4, comprising providing an edible adhesive on the upper surface of the sheet candy member and placing the first and second predetermined patterns of the additional candy beads on the edible adhesive.

Claim 6 The method of claim 4, wherein the second predetermined additional color candy beads are all the same color.

Claim 7 The method of claim 4, comprising placing candy beads of a third color next to each other on a substantially flat support surface;

providing a vacuum carrier having a substantially planar lower surface, a third predetermining pattern of openings in the lower carrier surface, and a vacuum chamber above the third predetermined pattern of openings;

placing a the vacuum carrier over the additional candy beads moving and moving the vacuum carrier onto the additional candy beads;

connecting the vacuum chamber to a vacuum;

using the vacuum and the third predetermined pattern of openings in the lower carrier surface to pick up a third predetermined pattern of said third color of candy beads and hold such predetermined pattern of beads on the lower carrier surface of the carrier;

positioning the carrier over the candy sheet member and moving the carrier and the third predetermined pattern of candy beads downwardly to place the third

predetermined pattern of candy beads adjacent the upper surface of the sheet candy member;

releasing the vacuum from the vacuum chamber and removing the carrier away from the sheet candy member; and

leaving the third predetermined pattern of additional candy beads attached to the sheet candy member.

Claim 8 The method of claim 7, comprising providing an edible adhesive on the upper surface of the sheet candy member and placing the first, second and third predetermined patterns of candy beads on the edible adhesive.

Claim 9 The method of claim 8, wherein the three predetermined pattern of colored candy beads from a cartoon picture.

Claim 10 The method of claim 1, comprising placing the sheet of plastic on the planar support surface;

placing the lower side of the sheet candy member on the sheet plastic; and

using a vacuum to connect the sheet candy member and the sheet plastic to the planar support surface.

Claim 11 The method of claim 1, comprising using a fruit flavored candy member.

Claim 12 The method of claim 1, comprising vibrating the substantially flat support surface to cause the colored candy beads to move into close contact with each other on the substantially flat surface, without any of the candy beads being situated on top of other candy beads.

Claim 13 The method of claim 1, comprising positioning a press over the candy beads and using the press to push the candy beads into the sheet candy member.

Claim 14 The method of claim 13, comprising placing additional hard candy beads of a different color next to each other on a substantially flat support surface;

providing a vacuum carrier having a substantially planar lower carrier surface, a second predetermined pattern of openings in the lower carrier surface, and a vacuum chamber above the second predetermined pattern of openings;

placing a the vacuum carrier over the additional candy beads and moving the vacuum carrier adjacent the additional candy beads;

connecting the vacuum chamber to a vacuum;

using the vacuum and the second predetermined pattern of openings in the lower carrier surface to pick up a second predetermined pattern of said additional candy beads and hold such second predetermined pattern of candy beads on the lower carrier surface of the carrier while leaving the remaining candy beads on the support surface;

positioning the carrier over the candy sheet member and moving the carrier and the second predetermined pattern of the additional candy beads downwardly to place the second predetermined pattern of additional candy beads on the upper surface of the sheet candy member;

releasing the vacuum from the carrier vacuum chamber and removing the carrier away from the sheet candy member; and

leaving the second predetermined pattern of additional candy beads attached to the sheet candy member.

Claim 25 The method of claim 1, comprising providing a vacuum carrier that includes both the first and second predetermined pattern of openings in its lower cover surface, and a first vacuum chamber above the first predetermined pattern of openings and a second vacuum chamber above the predetermined second pattern of openings.

Claim 26 The method of claim 25 comprising providing the third predetermined

pattern of openings in the lower carrier surface and the third vacuum chamber above the third predetermined pattern of openings.